UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MIDWESTERN PERSONNEL SERVICES, INC.

Respondent

Cases 25–CA–25503–2
25–CA–25823–3
25-CA–25978–5

CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION NO. 215, A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Charging Party

J. Steve Robles, Esq.,
for the General Counsel.
James U. Smith, III, Esq.
(Smith & Smith), of
Louisville, Kentucky, for the
Respondent.

SUPPLEMENTAL DECISION AND ORDER

Statement of the Case

IRA SANDRON, Administrative Law Judge. This matter arises out of a compliance specification and notice of hearing issued on June 30, 2003, against Midwestern Personnel Services, Inc. (MPS or the Respondent), stemming from the Board's Decision and Order in *Midwestern Personnel Services*, 331 NLRB 348 (2000), as affirmed by the Seventh Circuit Court of Appeals in *NLRB v. Midwestern Personnel Services*, 322 F.3d 969 (7th Cir. 2003). As set forth in the Board's decision, MPS truck drivers commenced an unfair labor practice strike on January 17, 1998. On March 27, 1998, they made an unconditional offer to return to work, at which time the Respondent refused to reinstate them, thereby violating Section 8(a)(3) and (1) of the National Labor Relations Act (the Act). It is undisputed that the backpay period began on March 27, 1998, and ended on December 31, 1999, the date when MPS ceased doing business in the geographic area where the discriminatees had worked.

Pursuant to notice, I conducted a trial in Evansville, Indiana, on November 17, 2003 and March 22–24, 2004, at which all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

A number of discriminatees testified. Additionally, the General Counsel called Patricia Nachand, former compliance officer, concerning preparation of the compliance specification and its methodology; Joe Dimatteo, a retired union business agent, as to the out-of-work list that was maintained by Teamsters Local 215 (the Union); and Tom Horstman, a representative of the State of Indiana's unemployment office in Evansville, regarding how the State treated discriminatees who had signed that list. The Respondent called Malcolm Cohen, president of Employment Research Corporation, as an expert witness in economics, concerning the job market for drivers during the backpay period; and Sam Ware, former president of MPS, on how the business operated and his interaction with employees.

The General Counsel and the Respondent filed helpful posthearing briefs that I have duly considered.

Legal Parameters

The Board and the Seventh Circuit Court of appeals have already determined that the Respondent discriminated against the subject employees by not reinstating them on March 27, 1998. Such an unfair labor practice finding is presumptive proof that they are owed some backpay. *Intermountain Rural Elec. Assn.*, 317 NLRB 338 (1995); *NLRB v. Mastro Plastics*, 354 F.2d 170, 178 (2d Cir. 1965), cert. denied, 384 U.S. 972 (1966). The objective in a compliance case such as this one is to restore the discriminatees to the status quo ante, as much as possible, to the circumstances that would have existed had the Respondent's unfair labor practices not occurred. *Alaska Pulp Corp.*, 326 NLRB 522, 523 (1998); *Manhattan Eye, Ear & Throat Hospital*, 300 NLRB 20 (1990).

It is usually impossible to know with absolute certainty exactly what an individual discriminatee would have made had he or she continued working for a respondent during the backpay period. Recognizing this reality, the Board has held that in evaluating the legal sufficiency of a backpay specification, the General Counsel need only show that the methodology it used was reasonable and non–arbitrary. *Virginia Electric Co. v. NLRB*, 319 U.S. 533, 544 (1943); *Performance Friction Corp.*, 335 NLRB 1117, 1118 (2001). Any uncertainty over how much backpay should be awarded to a discriminatee is resolved in his or her favor and against the respondent. *Alaska Pulp Corp.* supra at 522; *United Aircraft Corp.*, 204 NLRB 1068 (1973). Thus, the burden of proof is upon a respondent to establish affirmative defenses that mitigate liability (*Atlantic Limousine*, 328 NLRB 257, 258 (1999); *Hacienda Hotel & Casino*, 279 NLRB 601, 603 (1986)), as is the burden of calling discriminatees. *Electric & Cabcor Service Corp.*, 335 NLRB 315–316 (2001); *Superior Warehouse Grocers*, 282 NLRB 802 (1987).

In sum, MPS bears the evidentiary burden of showing the money it owes to any of the discriminatees should be reduced vis-à-vis the backpay specification. MPS has asserted three primary bases for diminution of backpay, as follows.

Issues

1. Whether the Respondent's April 12, 1999 offer of employment to discriminatees[1] constituted a valid offer of reinstatement, requiring discriminatees to respond and cutting off the Respondent's backpay liability.

2. Whether certain discriminatees failed to make reasonable efforts to secure and retain interim employment.[2]

3. Whether as to Wade Carter and Robert Linendoll, the Respondent is entitled to certain offsets not incorporated in the backpay specification.[3]

Facts

Based on the entire record, including the Board's Decision and Order, testimony of witnesses and my observations of their demeanor, documents, and stipulations of the parties, I make the following findings of fact.

A. Methodology Used by the General Counsel

In determining the backpay of discriminatees, Nachand made calculations on a quarterly calendar basis during the backpay period and deducted interim earnings from the projected earnings of what they would have made at MPS during the same time frames. Interim earnings were based on discriminatees' income tax returns. Projected earnings were determined by using the 1997 incomes of the discriminatees and, when their earning figures were unavailable, the average income of discriminatees whose figures were available.

The Respondent has stipulated to the validity of the General Counsel's overall methodology, and I find that it constituted a reasonable method of calculation.

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[1] GC Exh. 4.

[2] The interim earnings figures for Brian Aldridge, Chris Bolin, William Buzzingham, Anthony Clark, John Fritchley, III, Donald Harris, Michael Herr, Preston Kellams, Christopher Means, Jeffrey Metcalf, Michael Pettit, and Eric Webster are no longer in dispute. See the Rspondent's brief.

[3] The Respondent has contended that Randall Leinenbach's backpay should be reduced for the period of time he was incarcerated during the the third and fourth quarters of 1998. In its posthearing brief, at 12, the General Counsel has modified the backpay specification as to Leinenbach to reflect this, in conformity with applicable precedent. See, e.g., *Performance Friction Corp.*, 335 NLRB 1117, 1121 (2001); *Gifford-Hill & Co.*, 188 NLRB 337, 338 (1971).

B. The Respondent's Operations Prior to the Strike

MPS provided labor, primarily truck drivers, to companies engaged in the construction industry. River City Holding, Inc. was its largest customer. Most of the discriminatees worked out of locations in Boonville and Rockport, Indiana, but there were also work locations in Huntingberg, Indiana, and Owensboro, Kentucky. The wage rate paid to the drivers began at $10.80 per hour and went up several dollars, based primarily on seniority. Similarly, the number of hours drivers worked ranged from 40 to over 80 hours per week, with more senior drivers being given overtime preference.

C. Use of the Union's Out-of-Work List (the List)

After going out on strike, most of the discriminatees used the list maintained at the union hall. They had to sign the list at least once every 30 days, but some did so more frequently. When employers called with jobs for drivers, Dimatteo contacted persons on the list, starting with those at the top. Someone who turned down work went to the bottom of the list.

The State of Indiana accepts such a method as a reasonable work search. Thus, Horstman testified that the unemployment office considers an unemployed worker registered on a union's out-of-work list to have satisfied the requirement to actively search for employment. Therefore, such a person is not required to complete the active search section of the weekly voucher submitted to the unemployment office.

D. The Respondent's April 12, 1999 Letter

The April 12, 1999 letter of employment to discriminatees, signed by Area Manager Jim Teegarden, stated the following:

> You are hereby notified that work is available at Daviess County Ready Mix, in Owensboro, KY, at the rate of pay of $10.80 per hour. You are being offered this work and must respond to this letter of recall within three (3) days of receiving this letter by calling 1-800-897-9792.
>
> Failure to respond within three (3) days after receipt of this letter, will confirm that you are not interested in returning to work.

Many of the discriminatees had conversations with Teegarden following the issuance of the letter. Since Teegarden did not testify, their similar versions of what he said were uncontroverted, and I credit them.

Teegarden specifically told Gerald Fickas, John Henry Fritchley, Michael Herr, Henry Langdon, Scott Taylor, Randal Underhill, and David Wyatt that they would not carry over the seniority they had enjoyed before the strike. Teegarden also told Fickas, Fritchley, Herr, Taylor, Underhill, and Wyatt that they would be making less money than they had previously.

Fickas, Herr, Langdon, Taylor, Underhill, and Wyatt also would have had a considerably longer drive to get to Owensboro than the locations where they had previously performed work for the Respondent.

Randall Leinenbach spoke with the general manager of River City Holding, which contracted out the work to MPS. He was told that he would begin at a lower pay rate and without seniority restoration.

Two discriminatees—Timothy Cronin and Christopher Pentecost—responded to the letter and reported to the Owensboro facility. Cronin quit because, as a result of not having his seniority reinstated, he worked only half as many hours as he had before the strike. Pentecost also quit, after realizing that he would be paid less, retain no seniority, and have a longer commute.

For the reasons stated above, all of the named discriminatees either declined employment at the outset or quit shortly after accepting it.

In sum, the Respondent's employment offer, both on its face and as explained by Teegarden, effectively treated the discriminatees as new hires. Thus, the offer was without the seniority levels previously enjoyed, and it offered most of the discriminatees less (up to several dollars an hour) than they had made prior to the strike. Many discriminatees also would have a much longer commute.

E. Alleged Failure to Mitigate

The Respondent offered the testimony of economist Dr. Malcolm Cohen, who was stipulated to be an expert in his field, to show that the discriminatees as a group did not make reasonable efforts to search for and obtain interim employment. The Respondent also contends that specific individuals failed to do so.

I. The testimony of Dr. Cohen

Dr. Cohen was paid by the Respondent to prepare a report[4] and to testify. Using the report as a reference, he testified that the job market for truckdrivers during the backpay period was good, based on his analysis of national and statewide employment data. He summed up that there were 4,280 such jobs a year in Indiana and Kentucky. His report also detailed his review of the "help wanted" section of three local newspapers. For each newspaper, Dr. Cohen picked one day from each quarter during the backpay period and counted the number of advertisements he deemed applicable to the discriminatees.

[4] R. Exh. 7.

II. Specific allegations of failure to mitigate and claimed offsets

Following are the employment and employment efforts that specified discriminatees made during the backpay period, based on their unrebutted and credible testimony. With the exception of Cronin and Leinenbach, all of them were signed up on the out-of-work list during their periods of unemployment.

a. Carter

In 1998, Wade Carter went into his own business, under the name of Carter Construction Company, and he continued to be self-employed through 1999. In 1998, his business generated $35,167 in income, but after paying out wages and purchasing major business equipment, the business did not make any money that year. This was reflected in his income tax returns. There is nothing in the record to suggest that he would have gone into his business had he not been unlawfully laid off.

b. Cronin

On his own, Timothy Cronin obtained jobs at J.H. Rudolph (Rudolph), Spencer County Highway Department, and the Caddick Poultry Company. Cronin also temporarily returned to work at MPS but quit for the reasons previously stated. He also quit the job with Rudolph because it was too far from home and did not give him enough hours. After quitting Rudolph, he obtained a mechanic's position at Ford, through a temporary hiring agency.

c. Fickas

Through the list, Gerald Fickas obtained employment with Rudolph and with D. J. Transportation. He also applied for jobs listed in newspaper want ads.

d. Harris

Through the list, Gregory Harris secured employment at Field Technologies, Industrial Contractors, and Rudolph. He also sought work on his own, by submitting job applications, and he obtained employment with DMI Furniture, Blankenberger, and Dolly Madison Industries.

e. Langdon

Henry Langdon accepted six jobs through the union hall during 1998, including one at J.H. Rudolph. One of these assignments lasted 6 months. In addition, on his own, Langdon sought and secured employment with Boyd Brothers for the latter half of 1999.

f. Leinenbach

Randall Leinenbach applied for work through the unemployment office and independently made various other applications throughout the backpay period.

g. Linendoll

Through the list, Robert Linendoll worked for Sergeant Electric and AK Steel. He also successfully applied on his own for jobs at Jacobi Sod, Johnston Coca-Cola, BGM Equipment Company, and Huebner Trucking. Linendoll took a 3–week vacation during the last quarter of 1998. The record does not reflect that drivers for MPS received vacation pay, and I find it inappropriate to assume that such a benefit was provided.

h. Pentecost

In addition to signing the list, Christopher Pentecost signed up on at least five other Teamster Union out-of-work lists, in locations in states other than Indiana and Kentucky. He even expanded his search to non-Teamster Union out-of-work lists. Pentecost returned to work for MPS but quit for the reasons previously described. He was offered employment with Central City Produce but turned down the offer because he was advised that union work would soon be made available to him. He applied and secured employment at Mid America Oil Company, F.D. Jacobi Company, Gumbk Constructors, H.A. Klink, and TVA Power Plant through Atlantic Plant Maintenance.

i. Taylor

Through the list, Scott Taylor obtained employment at Sterling Boilers. He also applied for jobs through the unemployment office and on his own.

j. Underhill

Randall Underhill returned to work for a previous employer, Metzger Construction.

k. Williams

Gary Williams made job applications on his own. He obtained work with several employers, including Miles Farm, Evansville Marine, and A.K. Steel. Some paid less than what he made at MPS.

I. Wyatt

David Wyatt obtained a job at Rudolph through the list. He also made many job applications on his own.

Analysis and Conclusions

A. The April 12,1999 Letter

In order to require a discriminatee to respond and to toll backpay liability, an employer's reinstatement offer has to meet certain criteria. It must be specific, unequivocal, and unconditional in offering a discriminatee his or her previous (or substantially equivalent) position, at the same rate of pay, with seniority and benefits intact. *Hoffman Plastic Compounds*, 326 NLRB 1060, 1061 (1998); *Tony Roma's Restaurant*, 325 NLRB 851, 852 (1998). The burden is on the employer to establish that its offer met these requirements. *Tony Roma's* at 852.

The Respondent's offer, both on the face of letter and as explained to discriminatees by Teegarden, failed to meet any of the above requirements. Discriminatees were offered unspecified positions, with complete loss of previous seniority and, in most cases, at a considerably lower pay rate. Moreover, some of the discriminatees were faced with a much longer distance to travel to work. Just the fact that the offer took away discriminatees' seniority rights was enough to invalidate it. See *NLRB v. Laidlaw Corp.*, 507 F.2d 1381, 1382 (7th Cir. 1974).

Hence, I conclude that the offer of employment did not qualify as a valid offer of reinstatement and therefore neither required discriminatees to respond nor cut off the Respondent's backpay liability.[5]

B. Alleged Failure to Mitigate Backpay Liability

Discriminatees do have a duty to mitigate damages by making reasonably diligent efforts to seek interim employment. *Black Magic Resources*, 317 NLRB 721 (1995); *American Bottling Co.*, 116 NLRB 1303 (1956). Whether a claimant's search for employment has been reasonable is evaluated in light of all of the circumstances (*Pope Concrete Products, 312 NLRB 1171(1993); Cornwell Co., 171 NLRB 342, 343 (1968))* and is measured over the backpay period as a whole, not isolated portions thereof. *Wright Electric*, 334 NLRB 1031 (2001); *IBEW Local 3 (Fischbach & Moore)*, 315 NLRB 266 (1995). This reasonable diligence standard does not require a discriminatee to exhaust all possible job leads. *Black Magic Resources,* supra; *Lundy Packing Co.*, 286

[5] In light of these conclusions, I need not address the General Counsel's contention that the amount of time the Respondent gave discriminatees to respond was a further ground to invalidate the offer. I note that the letter did not give them a time limit in which to report to work or to make a decision but only to contact MPS. See *Estrline Electronics Corp.*, 290 NLRB 834, 835 (1988), which distinguishes the two situations.

NLRB 141, 142 (1987);

Consistent with the remedial nature of compliance proceedings, the burden is not on claimants to show they made a reasonable search for work but on a respondent to show their failure to do so. *Black Magic Resources*, supra; *Southern Household Products Co.*, 203 NLRB 881 (1973). The employer does not meet this burden by presenting evidence of lack of employee success in obtaining interim employment or of low interim earnings. *United Food & Commercial Workers Local 1357*, 301 NLRB 617 (1991). *Aircraft & Helicopter Leasing*, 227 NLRB 644, 646 (1976).

1. Dr. Cohen's Report and Testimony

The first part of Dr. Cohen's report gave the number of trucking positions available annually in Kentucky and Indiana. It did not include any data as to pool of potential applicants or an analysis of whether the discriminatees would or would not have been able to secure such positions. Those considerations aside, a fundamental problem with relying on this aspect of his findings is that his data was on a statewide basis. It contained no breakdown of the number of jobs available in various parts of each state and provided no specific information for the geographic area where the discriminatees worked. Certainly, the discriminatees were not obliged, as part of their duty to mitigate damages, to seek jobs in locations that would have forced them to relocate or to commute hundreds of miles.

The second aspect of Dr. Cohen's analysis was his analysis of local newspaper "help wanted" advertisements. By picking one day to project over an entire quarter, Dr. Cohen could have simply chosen the most favorable sample from each newspaper. Even if he made no deliberate effort to skew the results, the day selected might or might not have been representative. The report also failed to specify what qualified as a suitable job and would be counted. As with the first part of the report, no research was done into the pool of potential applicants or how many applicants actually put in for each of these jobs. Nor was any mention made of whether the discriminatees would have been likely to get the jobs or whether the jobs would have been comparable to the wages, hours, and commutes they had before. No analysis was done on how specific discriminatees would have fared in their applications; indeed, attempting to determine this appears to be an impossible task.

The Board has recognized the inherent difficulty of using want ads to evaluate whether discriminatees have made reasonable efforts to seek interim employment and, accordingly, has found such ads to be of little probative value. Thus, in *Airport Services Lines*, 231 NLRB 1272 (1977), the Board stated,"[T]he newspaper want ads did not establish that the jobs would have been available if [discriminatee] applied or that [discriminatees] would have been selected for any available positions." 231 NLRB at 1273; see also, *Florence Printing Co.*, 158 NLRB 775, 777 (1966), enfd. 376 F.2d 216 (4th Cir. 1967), cert. dend. 389 U.S. 840 (1967).

Taking all of the above factors into account, I conclude that Dr. Cohen's report and testimony were insufficient to meet the Respondent's burden of demonstrating that the discriminatees as a group failed to seek work with reasonable diligence.

2. The Actions of Individual Discriminatees

The Respondent contends that Langdon's and most other discriminatees' reliance on the list for extended periods of time did not constitute a reasonably diligent work search.

The Respondent first claims that the Union did not operate a true hiring hall. However, it offered no evidence to support this bald assertion, and the State of Indiana recognizes the Union's out-of-work list as a bona fide means of seeking employment. Consistent with the State's policy, the Board has held that seeking employment through a union's normal referral system evidences a reasonably diligent search. *Big Three Industrial Gas*, 263 NLRB 1189, 1198 (1982); *Seafarers Atlantic District (Isthmian Line),* 220 NLRB 698, 699 (1975). See also, *Moran Printing*, 330 NLRB 376 (1999) (such efforts must be more than sporadic). In any event, as discussed below, none of the discriminatees at issue relied exclusively on the list to seek interim employment.

The Respondent further contends that the decision of certain discriminatees to "work union" through reliance on the list breached their duty to mitigate. However, discriminatees are entitled to fulfill their job search responsibilities as union members, and an employer who discriminated against them is estopped from raising this as a ground for diminishing backpay liability. *Tulatin Electric*, 331 NLRB 36 (2000); *Ferguson Electric Co.,* 330 NLRB 514 (2000), enfd. 242 F.3d 426 (2nd Cir. 2001).

Turning to specific individuals, Fickas signed the list and obtained two jobs, one through the list. He also searched the classified ads and applied for various positions. Harris sought employment through the list, through which he secured three jobs. He also sought work on his own, leading to jobs at three other companies. In addition, he submitted applications to jobs that he did not obtain. Langdon signed the list and accepted six different jobs through the union hall during 1998 alone, one of which was an assignment that lasted 6 months. Leinenbach made numerous job applications through the State and on his own, and in 1999, worked each quarter for one employer. Taylor sought employment through the list and the State unemployment office. The Union helped him obtain one job, and he applied for several other positions, both through the State service and independently. Underhill was on the list and during the backpay period returned to work for a previous employer. Wyatt sought work through the list, through which he obtained a job, and he made many applications for employment on his own.

Based on the above, I conclude that Fickas, Harris, Langdon, Leinenbach, Taylor, Underhill, and Wyatt made reasonably diligent efforts to obtain interim employment and that the Respondent has failed to meet its burden of showing that they failed to mitigate damages.

With respect to Carter, the Respondent first contends that his self-employment effectively removed him from the job market and amounted to a willful loss of earnings, thereby disqualifying him from backpay. Legal precedent is clearly to the contrary. See *Cassis Management Corp.*, 336 NLRB 961 (2001); *Performance Friction Corp.*, 335

NLRB No. 86 (2001); *Fugazy Continental Corp.*, 276 NLRB 1334, 1338 (1985), enfd. 817 F.2d 979 (2nd Cir. 1987). The Respondent has therefore failed to satisfy its burden of proving Carter did not make a reasonably diligent search.

The Respondent raises an additional issue with regard to its backpay liability to Carter for 1998. That year, Carter purchased major equipment for his business. In calculating Carter's interim earnings in 1998, consistent with its methodology in general in formulating the backpay specification, the General Counsel relied on income tax returns. The Respondent has conceded the validity of this methodology.

The general rule is that a discriminatee's net earnings in his or her own business are treated as normal interim earnings.[6] *California Dental Care*, 281 NLRB 578 (1986); *Heinrich Motors*, 166 NLRB 783 (1967), enfd., 403 F.2d 145,148 (2nd Cir. 1968). The Respondent contends that the money Carter spent on major equipment in 1998 should be treated as net earnings and, hence, as interim earnings. However, the Respondent has not offered any Board or court precedent for this proposition. There is no evidence that but for the unlawful layoff, Carter would have gone into his business, as a result of which he incurred those equipment costs. Accordingly, and relying on the previously-cited presumptions in favor of discriminatees, I conclude that the Respondent has failed to carry its burden of proving that equipment costs for Carter's business venture should constitute interim earnings.

As to Linendoll, he worked at two jobs he secured through the list and at four other jobs he obtained on his own. I conclude that the Respondent has failed to establish that Linendoll did not make reasonable efforts to secure interim employment. There remains the matter of the 3–week vacation he took in the fourth quarter of 1998.

Nothing in the record suggests that Linendoll had or would have later received paid vacation benefits in the employ of MPS.[7] Therefore, that 3–week period must be considered time when he did not seek employment. The Respondent contends that the entire fourth quarter should be tolled because Linendoll did not work at all during that quarter. However, the vacation was only for 3 weeks, and the record does not support a finding that he removed himself from the job market for the full quarter. Rather, I conclude that it is more appropriate to reduce by three-thirteenths Linendoll's gross backpay figure for the fourth quarter of 1998. An equivalent deduction, with the appropriate resulting changes to accumulated interest, is reflected in the net backpay for Linendoll listed in the Order below.

[6] There is nothing in the record indicating that he engaged in any self-employment prior to his layoff, in which event income from his business would not be deducted from his backpay. See *Birch Run Welding & Fabricating,* 286 NLRB 1316 (1987).

[7] Contrast, *Ironworkers Local 15*, 298 NLRB 445 (1990), where the discriminatee had accrued paid vacation leave.

As to Pentecost, the Respondent contends that his failure to accept employment with a nonunion company and his subsequent lengthy period of unemployment establishes he failed to mitigate. However, Pentecost testified that he did not accept the position because he anticipated (better paying) union work would soon be available. He made numerous job applications and subsequently worked for several companies. I conclude that the Respondent has not established that he incurred a willful loss of interim earnings by not accepting the nonunion position. Cf. *Pepsi-Cola Bottling Co. of Fayetteville*, 330 NLRB 1043, 1044 (2000). As to Pentecost's long period of unemployment, the law is settled that that long periods of unemployment or underemployment do not necessarily equate to a showing of lack of reasonable diligence. *McKenzie Engineering,* 336 NLRB 336 (2001)*; Mining Specialists*, 335 NLRB 1275 (2001). In all of the circumstances, I conclude that the Respondent has failed to establish that Langdon's employment search was not reasonably diligent.

Finally, Williams sought work through the list and secured jobs on his own. The Respondent contends that Williams' backpay should be reduced because some of these jobs paid less than what he had made at MPS. However, there is no duty upon discriminatees to seek better paying jobs than those they have actually obtained during the interim earnings period. *Tilden Arms Management Corp.*, 307 NLRB 13 (1992); *Sioux Falls Stock Yards Co.*, 236 NLRB 543 (1978). I therefore conclude that the Respondent has failed to carry its burden of proving that Williams failed to make a reasonably diligent search.

Conclusion

For the reasons I have stated, I accept the General Counsel's final backpay specifications, as modified by its posthearing brief (at 11–12) in all respects, save the reduction I have set out to the amount owed to Linendoll.

On the above findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

IT IS HEREBY ORDERED that Respondent Midwest Personnel Services, Inc., its officers, agents, successors, and assigns, shall pay the individuals named below the indicated amounts of total gross backpay and other reimbursable sums for the period from March 27, 1998 to December 31, 1999:

Brian Aldridge	$16,422.00
Chris Bolin	$8,934.00

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the Board shall as provided in Sec. 102.48 of the Rules, adopt the findings, conclusions, and recommended Order and all objections to them shall be deemed waived for all purposes.

William Buzzingham	$44,887.00
Wade Carter	$37,448.00
Anthony D. Clark	$4,722.00
Timothy Cronin	$22,437.00
Jerry Fickas	$40,646.00
John Fritchley III	$13,214.00
Donald Harris	$8,773.00
Greg Harris	$18,102.00
Michael Herr	$5,721.00
Preston Kellams	$13,954.00
Henry T. Langdon, Jr.	$44,555.00
Randy Leinenbach	$43,185.00
Robert Linendoll, Jr.	$24,287.93
Christopher C. Means	$36,593.00
Jeffrey Metcalf	$21,794.00
Chris Pentecost	$53,433.00
Michael Pettit	$43,759.00
Scott Taylor	$24,421.00
Randal Underhill	$30,339.00
Eric Webster	$26,648.00
Gary Williams	$31,980.00
David Wyatt	$33,339.00
TOTAL	$649,593.93

Dated, Washington D.C., July 19, 2004

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IRA SANDRON
Administrative Law Judge